Supreme Court, U.S.
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No. 10-676 NOV 17 2010

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In The

Supreme Court of the United States

STEPHEN L. HAWKS, pro se,

Petitioner,

v.

JIM MATTOX, DAN MORALES, JOHN CORNYN, GREGG ABBOTT, in their personal supervisory capacities as Attorney Generals of Texas; and JOHN AND JANE DOES 1-50, employees of the Texas Attorney Generals Child Support Division, in their personal and supervisory capacities,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In 1975 the federal government determined that the best way to help women and children move from public assistance to self-sufficiency was to help them collect child support from the fathers. To ensure that states followed through with this idea, a state's receipt of welfare funding (under Title IV-A of the Social Security Act) was tied to its creation and operation of a child support enforcement program (under Title IV-D of the Social Security Act; hence the name "IV-D." [S. REP. NO. 1356, 93d Cong., 2nd Sess. (1974)]

In 1985 the Texas legislature named the Texas Attorney General as Head of the Title IV-D agency in Texas and as such the Texas Attorney General is responsible and accountable for every state entity that participates in the child support program to include the state judiciary.

Nationwide, the child support program is governed almost exclusively by federal regulations.

Title IV-D, 42 U.S.C. §651 *et seq.* spells out in great detail the standards state programs must meet to qualify for funding.

Texas is one of only three states that makes the attorney general responsible for the child support program and one of only two states where child support is the responsibility of an elected official.

QUESTIONS PRESENTED – Continued

Petitioner's 42 U.S.C. §1983 complaint alleges that the Texas child support agency set into motion a continuous deprivation of constitutional rights that ran unchecked starting July 15, 1988 and which continued through the end of May 2006; To wit:

The agency, through defunct administrative procedures, assessed Mr. Hawks support amounts in excess of court ordered support on a continual monthly basis for 215 months which created exorbitant erroneous arrears; the agency denied him any reasonable opportunity to correct these errors; the agency gave him erroneous legal advice as to how to seek review of these errors; the agency reported him to credit reporting agencies for *their* mistake; the agency rebuffed every attempt he made for review; the agency took excessive enforcement measures across state lines for their mistake, to include incarceration; the agency denied him rights and privileges under state and federal law that demanded notice, review and adjustment of his support plan; the agency denied him rights and privileges under state and federal law by failing to ensure accountability of the judiciary of the state and other subdivisions, and; they continued to deprive him of due process by instituting interstate garnishments well after Mr. Hawks support was settled in full, without benefit of notice or any pre-deprivation safeguards.

Respondents allege that because Mr. Hawks mentions in his complaint, that: During a support

QUESTIONS PRESENTED – Continued

order administrative modification process in February 1999 which happened to be presided over by a member of the state judiciary, that the tribunal failed to extend to him certain rights and privileges secured to him under state and federal law (even though these rights were unknown and unrevealed to Mr. Hawks at the time), that Mr. Hawks is thus challenging a state court order and thus *Rooker-Feldman* dismisses his entire suit of an 18 year continuous violation.

1. Did the lower court err by upholding the dismissal of the Complaint on *Rooker-Feldman* grounds?

2. Can *Rooker-Feldman* serve to interrupt the sequence of a continuous constitutional violation?

3. Where the state child support proceedings are infused with an extraordinary state financial interest, is their outcome hence tainted, and therefore should not be subject to *Rooker-Feldman*?

4. Considering that nationwide the states child support program is governed almost exclusively by Federal regulations Title IV-D 42 U.S.C. §651 et seq. and 45 C.F.R. §300 et seq.; Can a Federal District Court review a state child support order for constitutional due process deprivations under 42 U.S.C. §1983, without implicating the *Rooker-Feldman* Doctrine?

QUESTIONS PRESENTED – Continued

5. Can the District Court set aside *Rooker-Feldman* in the instance when, as here, the state order has already run to ground?

6. Does the Supremacy Clause, art. VI §2, trump the *Rooker-Feldman* Doctrine when the District court is asked to review a state order issued under a state-federal compact?

LIST OF PARTIES

The name of the Petitioner is:

STEPHEN L. HAWKS, pro se

The name of the Respondents are:

JIM MATTOX; DAN MORALES; JOHN CORNYN; GREG ABBOTT, in their personal supervisory capacities as Attorney Generals of the State of Texas; JOHN AND JANE DOES 1-50, employees of the Texas Attorney General Child Support Division, in their personal and supervisory capacities.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Stephen L. Hawks, pro se, petitions the Court for a Writ of Certiorari to review a final judgment of the United States Court of Appeals for the Tenth Circuit (entered July 20, 2010) affirming the District Court's dismissal of his Complaint.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Tenth Circuit (Holmes, Brorby and Ebel) is not reported and is included in the Appendix (App. 1). The final judgment of the United States District Court for the District of New Mexico (Black, B.D.) is not reported and is reproduced in the Appendix (App. 2).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Tenth Circuit was entered on July 20, 2010. *See* App., *infra,* at 1. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Supremacy Clause, art. VI §2:

The United States Constitution and its laws are the supreme law of the land.

U.S. Const., amend. V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. XIV, §1:

No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983:

Every person who under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, Suit in equity, or other proper proceeding for redress . . .

42 U.S.C. Title VI of the Social Security Act:

Prevented discrimination by government agencies that receive federal funding. If an agency is found in violation of Title VI, that agency can lose its federal funding.

§603 provides that any agency action taken pursuant to section 602 shall be subject to such *judicial review* as would be available for similar actions by that agency on other grounds. . . . and *the agency action would not otherwise be subject to judicial review under existing law, judicial review shall nevertheless be available to any person aggrieved* as provided in section 10 of the Administrative Procedure Act (5 U.S.C. §1009).

Title IV-D of the Social Security Act 42 U.S.C. §651:

For the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to all children (whether or not eligible for assistance under a State program funded under part A) for whom such assistance is requested, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

42 U.S.C. §667:

(a) Establishment of guidelines; method

Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State.

(b)(1) The guidelines established pursuant to subsection (a) of this section shall be made available to all judges and other officials who have the power to determine the child support awards within such State.

(2) There shall be a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of such guidelines is the correct amount of child support to be awarded. A written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined under criteria established by the State, shall be sufficient to rebut the presumption in that case.

45 C.F.R. §302.56 Guidelines for setting child support awards:

(a) Effective October 13, 1989, as a condition of approval of its State plan, the State shall establish one set of guidelines by law or by judicial or administrative action for setting and modifying child support award amounts within the State.

42 U.S.C. §660 The District Courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health and Human Services under section 452(a)(8) of this Act.

A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

45 C.F.R. §303.8 Review and adjustment of child support orders: (b) Pursuant to section 666(a)(10) of the Act, when providing services under this chapter, the State *must*:

(b) Pursuant to section 466(a)(10) of the Act, when providing services under this chapter, the State *must*: (e) Within *180 calendar days* of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State *must:* conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section . . .

(1) Have in effect and use a process for *review and adjustment* of child support orders being enforced under title IV-D of the Act, including *a process for challenging a proposed adjustment* or determination.

(2) *Not less* than once every three years, *notify* each parent subject to a child support order in the State of the right to request a *review* of the order, and the appropriate place and manner in which the request should be made.

(f)(1) In interstate cases, the State with legal authority to *adjust* the order will conduct the *review and adjust* the order pursuant to this section.

42 U.S.C. §654 – A State plan for child and spousal support *must* –

(1) provide that it *shall* be in effect in all *political subdivisions* of the State;

(31) provide that the State agency will have in effect a procedure for certifying . . . that *individuals owe arrearages* of child support in an amount exceeding $2,500 under which procedure –

(A) each individual concerned is *afforded notice* of such determination and consequences thereof, and an *opportunity to contest* the determination.

TEXAS GOVERNMENT CODES

T.F.C. §231.007. DEBTS TO STATE. (a) A person obligated to pay child support in a case in which the Title IV-D agency is providing services under this chapter who does not pay the required support is *indebted to the state* for the purposes of Section 403.055 . . .

(c) The Title IV-D agency is the sole assignee of all payments . . .

Sec. 403.001. DEFINITIONS. (a) In any state statute, "comptroller" means the comptroller of public accounts of the State of Texas.

Sec. 403.055. PAYMENTS TO DEBTORS OR DELINQUENTS PROHIBITED. (a) Except as provided by this section, the comptroller, as a ministerial duty, may not issue a warrant or initiate an electronic funds transfer to a person who has been reported properly under Subsection (f).

(f) Except as provided by Subsection (g), a state agency shall report to the comptroller each person who is indebted to the state or has a tax delinquency. The report must contain the information and be submitted in the manner and with the frequency required by the comptroller.

(g) A state agency may not report a person under Subsection (f) unless the agency first provides the person with an opportunity to exercise any due process or other constitutional or statutory protection that must be accommodated before the agency or the state may begin a collection action or procedure.

T.F.C. §101.034. TITLE IV-D CASE. "Title IV-D case" means an action in which services are provided by the Title IV-D agency under Part D, Title IV, of the federal Social Security Act (42 U.S.C. Section 651 et seq.), relating to the location of an absent parent, determination of parentage, or establishment, modification, or enforcement of a child support or medical support obligation.

T.F.C. §101.035. TRIBUNAL. "Tribunal" means a court, administrative agency, or quasi-judicial entity of a state authorized to establish, enforce, or modify support orders or to determine parentage.

T.F.C. §101.006. CHILD SUPPORT SERVICES. "Child support services" means administrative or court actions to:

2) establish, modify, or enforce child support or medical support obligations; action authorized or required under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.) or Chapter 231.

T.F.C. §101.033. TITLE IV-D AGENCY. "Title IV-D agency" means the state *agency* designated under Chapter 231 to provide services under Part D of Title IV of the federal Social Security Act (42 U.S.C. Section 651 et seq.).

T.F.C. CHAPTER 159. UNIFORM INTERSTATE FAMILY SUPPORT ACT

§159.001. CONFLICTS BETWEEN PROVISIONS. If a provision of this chapter conflicts with a provision of this title or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

§159.101. SHORT TITLE. This chapter may be cited as the Uniform Interstate Family Support Act.

(22) "Support enforcement agency" means a public official or agency authorized to seek:

(A) enforcement of support orders or laws relating to the duty of support;

(B) establishment or modification of child support;

(E) determination of the controlling child support order.

§231.001. DESIGNATION OF TITLE IV-D AGENCY. The office of the attorney general is designated as the state's Title IV-D agency.

T.F.C. §231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT. (a) The Title IV-D agency shall have final approval authority on any contract or proposal for delivery of Title IV-D services under this section and in coordination with the Texas Judicial Council, the Office of Court Administration of the Texas Judicial System, the federal Office of Child Support Enforcement, and state, county, and local officials, shall develop and implement a statewide integrated system for child support and medical support enforcement, employing federal, state, local, and private resources to:

(5) ensure accountability for all participants in the process, including state, county, and local officials, private contractors, and the judiciary.

T.F.C. §233.013. DETERMINING SUPPORT AMOUNT; MODIFICATION. (a) The Title IV-D agency may use any information obtained by the agency from the parties or any other source and shall apply the child support guidelines provided by this code to determine the appropriate amount of child support.

(b) If it has been three years since a child support order was rendered or last modified and the amount of the child support award under the order differs by either 20 percent or $100 from the amount that would be awarded under the child support guidelines, the Title IV-D agency shall file an appropriate child support review order, including an order that has the effect of modifying an existing court or administrative order for child support without the necessity of filing a motion to modify.

T.F.C. §154.123. ADDITIONAL FACTORS FOR COURT TO CONSIDER.

(b) In determining whether application of the guidelines would be unjust or inappropriate under the circumstances, the court shall consider evidence of all relevant factors, including:

(4) the amount of time of possession of and access to a child;

T.F.C. §156.409. CHANGE IN PHYSICAL POSSESSION. (a) If the sole managing conservator of a child or the joint managing conservator who has the exclusive right to determine the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months, the court shall, on the motion of a party or the other person having physical possession of the child, modify an order providing for the support of the child to provide that the other person having physical possession of the child shall have the right to receive and give receipt for payments of support for

the child and to hold or disburse money for the benefit of the child.

STATEMENT OF THE CASE

On July 15, 1988 a child support order regarding three children was issued in a Texas District Court attendant to the dissolution of marriage between Mr. Hawks and his spouse. The amount of child support was an "agreed to sum" by the parties that the court found to be within the state guideline range, T.F.C. §154.130, which was established by state legislative action tailored to comply with federal regulation 42 U.S.C. §667, 45 C.F.R. §302.56.

Beginning the first day of the order, July 15, 1988, Mr. Hawks alleges that the Texas child support agency (CSD), which is obligated under federal law with the maintenance (accounting, review, and adjustment) and enforcement of the support order, by and through clerical error assessed Mr. Hawks with an amount of support three times in excess of the 'agreed to sum' stipulated in that order.

Despite numerous attempts by Mr. Hawks for the CSD to take notice and repair the mistake, Mr. Hawks alleges the CSD stonewalled him, gave him erroneous legal advice, or ignored him altogether.

Between 1991 and 1997, Mr. Hawks' children moved to his residence in New Mexico for such a length of time and remained under his care (in excess

of three years) sufficient to establish the children as New Mexico residents.

Additionally, pursuant to Texas state law T.F.C. §§156.409, 154.123 Mr. Hawks was now to be afforded the "right" to receive support from his ex-spouse who voluntarily relinquished the primary care and possession of the children to him.

T.F.C. §156.409 Change in Physical Possession:

> (a) If the sole managing conservator of a child or the joint managing conservator who has the exclusive right to determine the primary residence of the child has *voluntarily relinquished* the primary care and *possession* of the child to another person for at least six months, the court *shall*, . . . modify an order providing for the support of the child to provide that the *other person* having physical possession of the child *shall* have the right to receive and give receipt for payments of support for the child.

Mr. Hawks alleges that despite his numerous attempts to elicit this right as well as other rights of due process from CSD, the agency stonewalled him, gave him erroneous legal advice, or ignored him altogether, a circumstance that is continuing. Shockingly, rather than take notice of the change in possession, the CSD instead undertook rigorous enforcement of the erroneous arrearages plied upon Mr. Hawks by the CSD practice of assessing him erroneous support amounts.

In December 1996, *Mr. Hawks* and his *ex-spouse* filed motions to modify the original order in a District Court in Lubbock, Texas based on Respondents' directive that the state courts were the only entity that could modify the order. That directive or policy is clearly in direct conflict with federal and state law. T.F.C. §233.013.

In February 1997, a Texas court held a hearing on the joint motions of *Mr. Hawks* and his *ex-spouse*. The lower Courts have failed to distinguish that Respondents in this case were not even a party to these proceedings:

> "We, too, have held that the *Rooker-Feldman* Doctrine does not affect suits by or against persons who were not parties to the initial case." *Kamilewicz v. Bank of Boston et al,* 100 F.3d 1348 (7th Cir. 1996); citing *Leaf v. Supreme Court of Wisconsin*, 979 F.2d 589, 598 (7th Cir. 1992); *Downs v. Westphal*, 87 F.3d 202, 203 (7th Cir. 1996) (Rovner, J., concurring). Cf. *Lynk v. LaPorte Superior Court No. 2*, 789 F.2d 554 (7th Cir. 1986).

In ignoring federal law the state court took no action on the motions until well over *two years* after the motions were filed.

45 C.F.R. 303.8 Review and adjustment of child support orders.

(b) Pursuant to section 466(a)(10) of the Act, when providing services under this chapter, the State *must*: (e) Within *180 calendar days* of receiving a

request for a review or locating the non-requesting parent, whichever occurs later, a State *must*: conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

In February 1999, the state court ignored the time of possession of the children in New Mexico and increased the support amount by applying a guideline scheme that was non-compliant with state or federal guideline statutes.

As stipulated in Respondents Appellee brief in the Tenth Circuit at 6, in March 2006, the modified order of 1999, the order to which the lower courts have applied *Rooker-Feldman*, was quashed or otherwise invalidated by motion to modify support order, instituted by the hand of the Texas Child Support Division (Respondents) and the ex-spouse, of their own volition. Therefore that order no longer carries any force and a review of the procedures used in modifying the order for constitutional deprivations will have no effect on rights or obligations of the parties. The District Court as well as the Tenth Circuit failed to distinguish or consider this happenstance.

> There appears to be only one exception to this hard and fast rule of federal-state comity [Rooker-Feldman], and it comes into play only when the state proceedings are considered a legal nullity and thus void ab initio.

Gruntz v. County of Los Angeles, 202 F.3d 1074 (9th Cir. 2000) citing *In re James,* 940 F.2d 46, 52 (3d Cir. 1991) (citing *Kalb*, 308 U.S. at 438-40).

Respondents do not deny the material facts and allegations of Mr. Hawks' complaint, but rather claim that the acts were performed by others within the child support agency. Respondents further allege that since the *Rooker-Feldman* Doctrine prohibits the District Court from reviewing the state 1999 modified order that all Mr. Hawks' constitutional claims, starting in July 1988 and continuing unabated through the end of May 2006 should be dismissed.

Further, Respondents and the District Court mischaracterize Mr. Hawks' suit as shown in Respondents' Tenth Circuit brief at 10: "As the District Court recognized, all of Appellant's claims of injury are caused by enforceable court orders." This distortion of Mr. Hawks' suit has the effect of dangling the wrong carrot in front of the court. Mr. Hawks' suit revolves around his allegations of constitutional deprivations associated with Respondents' administration and enforcement of child support orders in which federal law regulates from A to Z.

The lower courts have failed to distinguish that the due process deprivations Mr. Hawks alleges are attributable in connection to the 1999 order modification proceedings are only a fraction of the continuing violation, 1988-2006, that he was subjected to. Although it is a piece of the puzzle it is not a load bearing beam sufficient to bring down the house should it be disturbed. It is not an integral link in the chain, for Respondents' non-compliant child support plan was continuously sustainable whether or not the original order was modified. Therefore, for the

District Court to dismiss Mr. Hawks' whole complaint under *Rooker-Feldman* is clearly unjustifiable.

Mr. Hawks filed an original action under 42 U.S.C. §1983 in April 2007, naming only Gregg Abbott (in his personal capacity), (1:07-cv-348 LH-LAM). The District Court granted Defendants Rule 12(b) motion to dismiss citing jurisdictional defects which included the application of *Rooker-Feldman*. Hawks timely appealed Judge Hansen's decision which the Tenth Circuit later affirmed (09-2075).

In an attempt to cure the jurisdictional deficiencies cited by Judge Hansen, Mr. Hawks timely filed suit against Respondents Texas Attorney Generals in their personal capacities as Heads of the Title IV-D agency of Texas along with John and Jane Does 1-50, as yet unknown, employees of the Texas Attorney Generals Office – Child Support Division, in their personal capacities, under 42 U.S.C. §1983, §1985 conspiracy, malicious prosecution, abuse of process, intentional infliction of emotional distress, and seeking monetary damages. The District Court this time around only dismissed Mr. Hawks' action pursuant to *Rooker-Feldman* (App.2).

The Tenth Circuit affirmed the court's mandate on July 20, 2010 (App. 1).

REASONS FOR GRANTING THE WRIT

I. WHERE CONSTITUTIONAL CLAIMS ARE INDEPENDENT FROM STATE COURT PROCEEDINGS, AND THE JUDGMENT BELOW IS CONSTITUTIONALLY INFIRM, *ROOKER-FELDMAN* SHOULD NOT APPLY

Constitutionally infirm judgments do not deserve the full faith and credit of this court. *Kramer v. Chemical Construction Corp.*, 456 U.S. 461, 482, 102 S. Ct. 1883, 72 L.Ed.2d 262 (1982).

In the instant case, the state judgment and its predicate child support orders are based on state action that afforded less than full due process to the petitioner.

These due process violations included:

(1) Assessing him monies he did not owe.

(2) Failing to give him a meaningful hearing in which his case can be reviewed. For example, Hawks presented evidence to the court that his children had resided with him in New Mexico for a time such as to be sufficient to alter his support obligations.

This was ignored.

The blatant disregard of the evidence is such as to raise the possibility of gender bias. As cited from the Texas Attorney Generals Child Support website: "In 1975, the federal government decided that the best way to help *women* and children move from

public assistance to self-sufficiency was to help them collect child support from the *fathers*." (Applt. Br. at App. I).

The Office of the Attorney General, failing to review this case, further makes the state action constitutionally infirm. As stated in petitioner's brief in the Tenth Circuit (p. 19), "The lack of the OAG to establish and provide any review process enabled the OAG's defunct child support plan to run unabated for 18 years and prohibited any adjustment to bring the plan into constitutional muster.

The *Rooker-Feldman* Doctrine does not apply if plaintiff had "no 'reasonable opportunity to raise his federal claim in state proceedings.'" *King v. Epstein*, 2006 WL 328157 (11th Cir. 2006) (quoting *Blue Cross & Blue Shield of Md., Inc. v. Weiner*, 868 F.2d 1550, 1555 (11th Cir. 1989)).

Professor Wayne McCormack, in his text *Federal Courts* (Matthew Bender, NY, 1984), has argued that seven factors should be considered before conclusively applying *Rooker-Feldman*.

Whether or not:

(1) the state court or agency had an institutional interest in deciding as it did.

Whether or not:

(2) the constitutional claim refers to the manner of the state decision rather than to the point of original dispute between the parties.

Whether or not:

(3) the issue relates more to a person's relationship with the state than with another person.

Whether or not:

(4) the state decision was made without a full and fair hearing of facts.

Whether or not:

(5) there is a special need for federal court fact finding.

Whether or not:

(6) the plaintiff initially had or reasonably believed that he had no choice of forum.

Whether or not:

(7) the remedies sought in general court differed significantly from those available in state proceedings.

McCormack is not the only authority who believes that exceptions to *Rooker-Feldman* are appropriate in circumstances when due process has been impaired.

Circuit Judge Rives of the Fifth Circuit in his dissent in *Brown v. Chastain*, 416 F.2d 1012 (5th Cir. 1969), eloquently distinguished claims under Title 42 U.S.C. §1983 from state court cases in which constitutional claims are not litigated.

Rives' opinion included the observation that:

> It is important to note at the outset that the *Rooker* Doctrine is not an exception to or limitation upon the original jurisdiction of the federal courts, for once the jurisdiction has been granted, only Congress or the people by constitutional amendment can constrict it. US Const. Art. III . . . Rather, the doctrine is a limitation on the discretion of the federal courts to exercise their jurisdiction. The difference between dismissing a claim because of a lack of power and dismissing a claim because of limited discretion to exercise jurisdiction may, at first blush, seem academic. I submit, however, that unlike a decision involving rigid interpretations of jurisdictional statute, determination of proper exercise are [sic] tempered by considerations of efficient administration of justice, a solicitous regard for fundamental rights, and traditional discretion of the chancellor. The principle of estoppel by judgment must be treated in proper perspective – as a limitation on the "federal courts" discretion to exercise jurisdiction. Cf. *Tribute Review Publishing Co. v. Thomas*; *Fay v. Noia*, 1963, 372 U.S. 391, 415-420, 83 S. Ct. 8229, L.Ed.2d 837.

Judge Rives expressed his opinion that civil rights jurisdiction "was a 'compelling basis' for an exception to the rigorous bar of res judicata." *Brown v. Chastain supra.*

42 U.S.C. §1983, which is one of the bases for appellants' complaint, created substantive national rights redressable in a federal forum. *Hague v. C.I.O., supra*, 327 U.S. at 529, 59 S.Ct. 954 (Stone, J., Concurring); *McNeese v. Board of Education, etc.*, 1963, 373 U.S. 668, 672, 83 S.Ct. 1433, 10 L.Ed.2d 622; *Beauregard v. Wingard*, 230 F.Supp. 167, 185 (S.D.Cal., 1964) (dictum). Barring the federal courts from hearing claims arising out of the national civil rights statutes would neither serve the needs of comity nor promote harmonious federal-state relationships. Cf. Note, Res Judicata: Exclusive Federal Jurisdiction and the Effect of a Prior State Court Determination, 53 U.Va.L.Rev. 1360 (1967). As support for my position at least three circuits, including this one, have opaquely suggested that the *Rooker* res judicata principle is inapplicable to actions involving 42 U.S.C. §1983. Moreover, there is a line of authority holding that "A determination of a federal constitutional question by a state tribunal is not conclusive if there is no right of appeal to the federal courts." *Garland Co. v. Filmer*, 1 F.Supp. 8, 12 (N.D.Cal., 1932). *See Angel v. Bullington*, 1947, 330 U.S. 183, 189 and 205, fn. 11, 67 S. Ct. 657, 91 L.Ed. 832 (Rutledge, J., dissenting). Since appellants' only path to the Supreme Court is by certiorari, and not by appeal, see 28 U.S.C. §1257, there is little certainty that appellants' claims will ever be passed upon by federal judges. In the light of the limited applications of *Rooker* and the special regard which the cases have shown

for full and prompt vindication of special national rights, I would hold that the District Court did not abuse its discretion in exercising jurisdiction under 28 U.S.C. §1343.

Appellees argue that the federal court cannot assume jurisdiction of this dispute until appellants file in the Supreme Court of the United States a petition for certiorari to the Supreme Court of Florida. This argument presents a problem of federal-state comity. Cf. *Fay v. Noia, supra*, 372 U.S. at 428, 83 S.Ct. 822. I find no persuasive authority for the proposition that appellants should be required to exhaust federal appellate remedies before invoking original jurisdiction under 28 U.S.C. §1343. Although state administrative remedies must usually be exhausted before invoking federal jurisdiction, the same rule does not strictly apply to judicial proceedings unconnected with an administrative scheme. *Lane v. Wilson*, 1939, 307 U.S. 268, 274, 59 S.Ct. 872, 83 L.Ed. 1281; *McGuire v. Sadler*, 5 Cir. 1964, 337 F.2d 902, 906. See generally 1 Barron & Holtzoff, Federal Practice §65 (Wright ed. 1950 with 1968 supp.). But cf. *Alabama Public Service Comm. v. Southern Ry. Co.*, 1951, 341 U.S. 341, 348-350, 71 S.Ct. 762, 95 L.Ed. 1002. In the case at bar prompt vindication of appellants' rights is necessary so that the child can be afforded a stable family relationship. There is no compelling reason why the federal court should stay its hand because of appellants' failure to pursue a doubtful remedy.

Brown v. Chastain, supra.

Further, the ultimate source of the unconstitutional state action the petitioner complains of lies in the actions of Texas' child support enforcement system, a system that offered him little, if any, opportunity to address errors and arbitrary and capricious decisions.

Such action is exempt from *Rooker-Feldman*.

While the *Rooker-Feldman* Doctrine recognizes that the federal District Courts may not review decisions by a state court, it does not preclude federal district review of executive action including determinations made by a state administrative agency. *Mitchell v. Fishbein*, 377 F.3d 157 (2004) citing *Verizon Maryland Inc. v. Public Service Commission of Maryland*, 535 U.S. 635, 644, 122 S.Ct. 1753 (2002). This principle holds true even where the administration acted in an adjudicative capacity or where the plaintiff could have sought, but did not seek, review of the agency's determination in a state court. *Mitchell, id.*

There is a deeper issue here that raises the real question as to whether political considerations rather than legal ones are at the root of *Rooker-Feldman*.

Comity, rather than jurisdiction, is the ultimate source of *Rooker-Feldman*'s power. This was acknowledged in *Moore v. City of Asheville*, 396 F.3d 385 (2005).

Federalism and comity surely attend application of the *Rooker-Feldman* Doctrine.

But comity, the respect one court system has for another, is not the same as an absence of jurisdiction.

As Rives pointed out, the jurisdiction is still there, but it is discretionary under *Rooker-Feldman*.

Ultimately, the supremacy of federal law, as stated in the Constitution, must not be circumvented by state actors who disregard people's rights.

The reason civil rights laws exist are to establish boundaries between the government and the people. In this case, those boundaries were crossed repeatedly by the defendant.

Whatever flaws there may be in the Complaint can be cured by amendment, and the courts must make allowance for this, including the adding of further parties.

Picking v. Pennsylvania Railway, 151 F.2d 240 (3d Cir. 1945). In *Picking* the plaintiff's civil rights complaint was 150 pages and described by a federal judge as "inept." Nevertheless, it was held:

> Where a plaintiff pleads pro-se in a suit for protection of civil rights, the court should endeavor to construe Plaintiff's Pleadings without regard to technicalities.

In *Walter Process Equipment v. Food Machinery*, 382 U.S. 172 (1965) it was held that in a "motion to dismiss, the material allegations of the complaint are taken as admitted." From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see *Conley v. Gibson,* 355 U.S. 41 (1957).

In *Puckett v. Cox*, it was held that a pro-se complaint requires a less stringent reading than one drafted by a lawyer (456 F.2d 233 (6th Cir. 1972)). Said Justice Black in *Conley v. Gibson*, 355 U.S. 41 (1957):

> The federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. According to rule 8(f) FRCP all pleadings shall be construed to do substantial justice.

II. RESPONDENTS HAVE AN EXTRAORDINARY FINANCIAL INTEREST IN THE STATE JUDGMENT

The Respondents in this case, as well as every other state child support agency throughout the United States and its holdings, participate in two joint state-federal programs created by Congress; Title IV-D of the Social Security Act 42 U.S.C. §651 et seq., 45 C.F.R. §300 et seq. and the Uniform Interstate Family Support Act (UIFSA). Under these programs the state receives federal welfare funding (Title IV-A of the act) and other federal grants (42 U.S.C. §669b). The states also receive federal funds that are correlated from the actual amount of child support collected. The more money they can generate through child support orders the more money they can collect which allows them to receive more federal funds. The receipt of these funds however, is conditioned on

the state's compliance with federal regulations. If the state agency does not comply with federal regulations Title IV-D, just as with 42 U.S.C. Title VI of the Social Security Act, provides the agency can lose its federal funding. Title VI further provides that if a person is aggrieved by an agency action and the agency action would not otherwise be subject to judicial review under existing law, judicial review shall nevertheless be available to any person aggrieved as provided in section 10 of the Administrative Procedure Act (5 U.S.C. §1009). Petitioner argues that the provisions of due process available to an aggrieved person under Title VI are complementary under Title IV-D as both "acts" are promulgated under the Social Security Act and both titles are state-federal compacts.

To be sure however, the state agency here has absolutely *no oversight*.

As an example, in August 2009 Mr. Hawks filed a complaint citing the same grievances against the Texas child support agency with HHS/OCSE in Dallas, TX, who administer the Title IV-D program in Texas. Mr. Hawks was assured by the OCSE that "something would be done." As it turns out OCSE "forwarded" the complaint to the Texas CSD who has ignored it. The OCSE's explanation for this action was "we are not a policing agency." When learning of this action taken by OCSE in Dallas, Mr. Hawks complained to Vicki Turetsky, Commissioner for the Office of Child Support Enforcement in the U.S. Department of Health and Human Services Administration, in September of 2009. That complaint has

never even been acknowledged. In October of 2009 Mr. Hawks visited with an FBI agent at their Dallas location, Mr. Pennywell. After explaining his civil rights complaint to the agent Hawks was told that it was doubtful the FBI had jurisdiction but that he should contact the Office of Inspector General. Mr. Hawks' contact with the OIG, State and Federal, proved to be a dead end.

The door has been left open for Respondents to run their agency in any manner they please without worry of compliance with federal law, no one is watching.

So it is, should a child support agency through administrative action or judicial action (makes no difference for under Title IV-D each are treated equally) happen to make a mistake knowingly or not, concerning the amount of support or manner of enforcement, sufficient to implicate due process; under the current state of affairs in Texas, an obligor or obligee has no other recourse available other than the federal courts. To top matters off, the lower courts' decision here even slams that door shut.

A short summation of this suit is:

> Petitioner alleges Respondents' bookkeeping practices, complaint procedures and, enforcement policies are so defunct, if they exist at all, as to call into question constitutional due process and that Respondents' conduct was applied to Petitioner continuously for 18 years.

> Respondents' position is that they have a legal right to enforce any amount of child support they scribe into their ledgers, without regard to any error on their part.

The major flaw with Respondents' argument is that they are the enforcers, the complaint department, the bookkeepers of child support orders and obligees under the order giving them a financial interest in any alteration of the orders, who staunchly rebuff any attempt to review these federally regulated tasks and benefits by any source.

In Petitioner's reply brief in the Tenth Circuit at 13-16 he cites state precedent *State of New Mexico v. ex rel. Children, Youth, and Families Department v. Andree G.* 2007-NMCA-156, 143 N.M. 195, 174 P.3d 531, Court of Appeals N.M. a published opinion which holds: " . . . obligee usually refers to the individual receiving the payments. While it is most commonly the custodial parent," it may also be "a state [entity][with an] independent statutory claim . . . " See UIFSA §101 cmt. (1996), 9 (Part IB) U.L.A. 310 (2005). See also *Harbison v. Johnson*, 2001-NMCA-051, 130 N.M. St. B. Bull. 3w2, 28 P.3d 1136, Court of Appeals N.M. Released for Publication July 31, 2001.

In an Interstate child support case such as this, once a parent under a support order requests state assistance with the support order, pursuant to Title IV-D and UIFSA, the parent is required to sign over all rights under the order to the state. T.F.C. §231.007. Although Petitioner cited this precedent to

show that Respondents invoked the personal jurisdiction of New Mexico by filing numerous UISFA petitions in that state beginning in 1992 pursuant to his ex-spouse's request for assistance from Respondents, it also serves to show that Respondents had an extraordinary financial stake in the outcome of any future modifications to the order.

Rooker-Feldman should not be used to prohibit review of a state child support order when as here; Congress has given the state itself an extraordinary financial interest in the order.

In any event, the Title IV-D program alone provides performance-based federal incentive funding to the states based on certain criterion that is used to measure the state's performance of certain program functions *See* 42 U.S.C §658a. The Federal Office of Child Support Enforcement's latest statistics (FY 2009) is that the federal government provided 3.8 billion dollars to the states for child support enforcement and the states collected 26.4 billion. The information the OCSE collects is *self*-submitted by the state agencies themselves. Simply put, the states get more rewards (cash) for the more money they collect. In 2009 there were 15.8 million cases in the child support enforcement program. Without question this is big business and should the states fudge a little bit on their accounting, a standard practice Hawks alleges in his complaint, who's the wiser without review.

There may be a window here as to why over 60% of the nation's child support is in collections (arrears).

(OCSE statistics 2009). Mr. Hawks alleges with confidence that there is at least a $30,000.00 discrepancy (error) in Respondents' ledgers regarding his support history that accrued over 18 years. This averages out to about $1,666.00 per year. There being no oversight or inquiry by OCSE into Title IV-D agency self-reporting, one is left with no insight as to how big a problem overcharging the system by Title IV-D agencies may be at hand. For argument sake consider the following:

By Jenny Mandel jmandel@govexec.com February 1, 2007, http://www.govexec.com/dailyfed/0207/020107m2.htm:

> Administration officials announced Wednesday that the number of federal programs susceptible to making erroneous payments has gone up, as has the total estimate of federal outlays at risk of mistakes . . .
>
> For fiscal 2006, the federal improper payment rate, which includes payments made mistakenly to ineligible recipients or as a result of fraud or other error, was 2.9 percent, translating to $40.5 billion in errors, according to a new Office of Management and Budget report.

Should the Court allow the liberty of Petitioner applying this 2.9 percent U.S. government error rate to Title IV-D agency self-reporting it reveals:

2.9% x 15.8 million child support cases = 458,200 cases in which error may have occurred. That number should be doubled to 916,400 to include both obligors

and obligees to reflect how many citizens may be implicated in due process violations, and;

2.9% of 24.6 billion = $756,600,000 that states may be collecting and or receiving through incentive payments in error per year. This equates to about $1,651.00 per incident (person) per year which is almost identical to the number Mr. Hawks' claims. Obligors, 99.9% men/fathers, without question are taking the brunt of these due process violations and mismanagement that should be addressed by its rightful name which is fraud.

T.F.C. §231.007. DEBTS TO STATE. (a) A person obligated to pay child support in a case in which the Title IV-D agency is providing services under this chapter who does not pay the required support is *indebted to the state* for the purposes of Section 403.055 . . .

(c) The Title IV-D agency is the sole assignee of all payments . . .

In our capitalistic society the people that control the money undeniably make the rules. That circumstance is no less true here, for Congress controls the IV-D child support program money that is appropriated to the states *contingent* to their rule that states follow federal law. To be sure, one of the Respondents in this case, Gregg Abbott, has a state website in which he readily expounds that: "Nationwide the child support program is governed almost exclusively by federal regulations." (Applt's Br. at App. I.). Federal law does not control the child support program intermittently at the whim of the state. Federal law

controls child support from the first step of locating and identifying responsible parents; through the process of issuing a *state order* of support in any manner it is validated; and continues through the enforcement of that order until its conclusion. This is an interstate case with diversity involved. Congress through the UIFSA act, which is tied at the hip with Title IV-D, has effectively given the states open jurisdiction throughout the nation to enforce their support orders. Again however, this free reign is not without constitutional restrictions. A states right to enforce is contingent upon the federal statutory requirement that the state protect the due process rights of Mr. Hawks. *See* 45 C.F.R. §303.101(2) "The due process rights of the parties involved must be protected."

The Court is well aware of the waste in government through mismanagement and human error but here constitutional rights are at stake and citizens' rights under the Constitution are not apportioned out in percentages. Some sort of checks and balances and/or oversight is squarely needed over the Title IV-D agencies and Congress, by statutorily setting out rights of due process under Title IV-D have put the burden on the federal courts should the state agency fall short.

The numbers provided above deserve some credibility for the Title IV-D "program" was obviously included in the government's audit. The numbers could be lower or higher but that's a fact that is almost impossible to determine for rarely, if ever, does any state actor come forward and readily admit they

have deprived someone of their civil rights or that their accounting is in error. Surely there would be little mention or need of §1983 were it otherwise. Further, as aforementioned, Respondents have been flying under radar since at the very least July 1988. For over 22 years they have been able to avoid the checks and balances scheme that the Constitution was designed with to keep our government on course. Indeed, Mr. Hawks' complaint and subsequent pleadings has consistently set forth allegations of active concealment of material facts by respondents.

A State child support agency can realize millions in unwarranted monetary gains each year simply by reducing the administrative costs associated with notice, review, and adjustment of child support orders (effectively eliminating constitutional due process), and manipulation of their bookkeeping by assessing obligors support amounts greater than set forth in court orders. Of course the agency does so at its own peril should their non-compliance with federal regulations become known. Petitioner urges that Respondents have been navigating this exact slippery slope for decades without detection and should the lower Courts' mandate be allowed rest in peace, this constitutionally impermissive conduct will be allowed to continue under the protection of *Rooker-Feldman*.

The constitutional due process rights Mr. Hawks alleges he was deprived of not only are extended to obligors but obligees as well. Therefore, the Tenth Circuit's application of *Rooker-Feldman* to an agency or even quasi-judicial state child support order that

at its very essence is regulated by federal law will effectively eliminate any review of constitutional deprivations for 31.6 million people, should the state agency as here, completely abandon their obligation to follow federal regulations with the administration of child support.

Without question this situation is presently before this court.

III. THE SUPREMACY CLAUSE TRUMPS *ROOKER-FELDMAN*

There is but one precedent in the whole of this nation that can be retrieved through diligent search that has ever held a Title IV-D agency's conduct, in regards to child support, to be unconstitutional when it is non-compliant to federal law. See *Jackson v. R Rapps*, 947 F.2d 332 (8th Cir. 1991). *Rehearing and Rehearing En Banc* denied Jan. 9, 1992.

In *Jackson*, plaintiffs §1983 suit against former and present directors of the Missouri Division of Child Support Enforcement challenged the director's policy and practice of attempting to collect total benefits paid under AFDC program alleged that the policy violated federal regulations. The District Court granted partial summary judgment to the plaintiffs, holding that the federal regulations preempted the director's policies and practices. The court also denied the director's cross-motions for summary judgment on the plaintiff's claim for damages, ruling that the director's were not entitled to absolute or qualified immunity.

> We affirm on the ground that the supremacy clause prevents implementation of a reimbursement policy other than one in compliance with existing federal regulations. The State of Missouri participates in the joint state-federal AFDC program authorized by title IV-A of the Social Security Act, 42 U.S.C. §§601-615 (1988). As a condition for funding the state must comply with the requirements of federal statutes and regulations governing the AFDC program . . . The state is required to adopt a child support enforcement program in "substantial compliance" with Title IV-D of the Social Security Act, 42 U.S.C. §§651-665. 42 U.S.C. §602(a)(27) . . . The Director of the Division is responsible for adopting policies and regulations for implementing the state's plan and for ensuring compliance with the federal regulations. *Id.*

Jackson, although involving AFDC reimbursements, is analogous to the instant case.

First, reimbursements for AFDC payments by obligors are calculated under similar and often, as appears to be in Texas, the exact same guideline scheme/statute and process as child support orders.

Second, under AFDC and IV-D once the obligor's and/or obligee's financial facts and other federally required criteria are established and applied to the guideline scheme a "state order" *must* issue, either by agency or by judicial hand it remains an administrative task, to put the process in legal effect. So a state

order was in *effect* when plaintiffs in *Jackson* initiated their §1983 suit, unlike the order here that has run to ground. Respondents in their Tenth Circuit brief at 26 distort *Rapps* by claiming that there was an absence of a court order in that case. However, if there was no court order to put the agencies findings in legal effect, there would have been no cause of action and no suit, therefore Respondents' assertions have no merit.

Therefore, it is obvious why *Rooker-Feldman* is never mentioned during the lengthy *Jackson* litigation, which encompassed some eight years. The Court obviously observed that plaintiffs were not contesting the state order itself, but rather the unconstitutional manner in which it was produced, which is the identical situation here. In any event, federal law controlled all the state agency's actions throughout the process, so the supremacy clause negated any consideration of *Rooker-Feldman*.

By Texas statute Respondents direct the Title IV-D agency in Texas. Texas statutes further state unequivocally that the agency must adhere to Federal law.

T.F.C. §231.001. DESIGNATION OF TITLE IV-D AGENCY. The office of the attorney general is designated as the state's Title IV-D agency.

T.F.C. §231.0011. DEVELOPMENT OF STATEWIDE INTEGRATED SYSTEM FOR CHILD SUPPORT AND MEDICAL SUPPORT ENFORCEMENT. (a) The Title IV-D agency shall have final approval

authority on any contract or proposal for delivery of Title IV-D services under this section . . . to:

(5) *ensure accountability* for all participants in the process, including state, county, and local officials, private contractors, and the *judiciary*.

T.F.C. §231.002. POWERS AND DUTIES. (a) The Title IV-D agency may:

(d) *Consistent with federal law* . . .

(A) establish and enforce child support obligations;

(e) The Title IV-D agency may take the following *administrative actions* with respect to the location of a parent, the determination of parentage, and the establishment, *modification*, and enforcement of child support and medical support *orders* required by 42 U.S.C. Section 666(c), without obtaining an order from any other judicial or administrative tribunal:

T.F.C. §231.104. ASSIGNMENT OF RIGHT TO SUPPORT. (a) To the extent authorized by *federal law,*

Respondents publicly acknowledge through their website advertising and other official publications that child support is governed exclusively nationwide by federal law. Therefore, Respondents are well aware of their federal obligations. Yet Respondents at 16 in their Tenth Circuit brief make claim that under the Domestic Relations Exception, a federal court is prevented from reviewing child support orders. This

is a perfect example of the unscrupulous tactics Respondents have used for decades to manipulate the courts and continue to employ here to evade the sunlight this case demands.

In this light, the Court should take note that not one lower court opinion in either of Mr. Hawks' actions in the Tenth Circuit makes any reference to the fact that Respondents and the state courts are governed almost exclusively by federal law in their administration and enforcement of child support in the state. Indeed, Respondent's artful pleading throughout their Tenth Circuit brief serves to distance themselves from Texas state court orders. Appellees Br. at 5: "The state court in Texas entered orders . . . Appellant was indicted for failure to pay his child support pursuant to the state court orders . . . ; at 7. Appellant's causes of action directly rose out of orders from state court in Texas . . . Appellant urges this court to review the state court orders." This ploy accomplishes three things:

(1) It serves to blindfold the court from the knowledge that [R]espondents are to be held accountable for the state courts and the state judiciary's compliance with federal regulations in the issuance, enforcement, and modification of child support orders, e.g., 45 C.F.R. §303.8, T.F.C. §231.0011, and;

(2) It serves to keep the Courts (Federal and State) ill-informed of the constitutional due process rights of persons, which Congress has explicitly set forth in voluminous statutory provisions throughout

the Social Security Act and attendant Codes of Federal Regulation, and;

(3) It hides Respondents' defunct bookkeeping practices of assessing Petitioner child support he didn't owe, which Respondents enforced in criminal actions by asserting these errors were enforceable arrears, which is the nexus of this suit.

To be sure, for the ensuing 22 years, Respondents pursuant to their enforcement practices have never provided to any court, agency, review board, or Petitioner, a certified account of arrears attributable to Petitioner which is a federal requirement. 42 U.S.C. §654.

Mr. Hawks makes no claim that he did not resist paying the child support assessed to him by Respondents for which they had no legal authority, for who among us wouldn't resist an illegal debt; however, Mr. Hawks asserts that he provided for his children in a manner over and above the intent of Congress.

Petitioner has worked in the ranching industry for over 45 years and can assure the court he knows how many cows are supposed to be in the pasture.

The lower court's mandates signify a drastic and unprecedented expansion of *Rooker-Feldman* in direct conflict with the Supreme Court's recent opinions in *Exxon v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005), and the Supremacy Clause, art. VI §2. *See also Verizon. Id.*

Neither this Court, nor any other federal court save for the lower courts in the instant action, have

ever applied *Rooker-Feldman* to a state order, administrative or otherwise, that is on its face rigidly controlled by federal law pursuant to a joint State-Federal compact. The Tenth Circuit's decision is not grounded in precedent; attempts to circumvent this Court's precedent and would set aside the Supremacy clause in favor of a judiciary doctrine.

To dismiss this action would be grossly unjust. The petitioner has set forth an issue which is of broad national importance, affecting non-custodial and custodial parents who number in the tens of millions, and who suffer egregious harm by an assembly line injustice in the state child support industry which feeds off persons such as the petitioner.

Lastly, and more important, the decision of the Tenth Circuit will have a devastating effect on the children. When a government system such as this mistreats the parent it mistreats the child. Petitioner is well situated to vouch for the devastating long-term effects Respondent's conduct had on his children, for Respondent's unprincipled enforcement practices ran concurrent with Mr. Hawks' possession of his children. The amount of child support nationwide that remains in collections is shocking. Petitioner urges that the absence of enforceable due process within the child support system is a major contributor to this circumstance and if the rights of parents to fair support proceedings are further diminished it is fair to say the percentage of support in collections will climb even higher, exposing the nation's children to greater harm. In this nations economically distressed

state the well being of the family unit, separated as it may be, deserves more consideration than a state's agenda of generating lucrative federal funds, which can then be spent for any purpose. The Congressional cornerstone of IV-D is "assuring that assistance in obtaining support will be available under this part to all *children*," and not to provide a state with a means to subsidize a mismanaged budget. 42 U.S.C. §651 *infra*.

It is a form of government and legal abuse which needs correction.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STEPHEN L. HAWKS,

Plaintiff-Appellant,

v.

JIM MATTOX; DAN MORALES; JOHN CORNYN; GREG ABBOTT, in their personal supervisory capacities as Attorney Generals of the State of Texas; JANE DOES 1-50, employees of the Texas Attorney General Child Support Division, in their personal and supervisory capacities,

Defendants-Appellees.

No. 09-2316
(D.C. No.
2:09-CV-00436-BB-KBM)
(D. N.M.)

ORDER AND JUDGMENT*

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

App. 2

(Filed Jul. 20, 2010)

Before **HOLMES**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and **EBEL**, Circuit Judge.

Stephen L. Hawks, appearing pro se, appeals the district court's dismissal of his civil rights suit for lack of subject matter jurisdiction under the *Rooker-Feldman* doctrine.[1] We have jurisdiction under 28 U.S.C. § 1291. Exercising de novo review, *see Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1165 (10th Cir. 1998), we affirm.

Mr. Hawks' dispute with the defendants, primarily the current and former Texas Attorneys General, arises out of two Texas child-support orders. In 1988, the state court issued a decree of divorce including certain child-support provisions. In 1999, the state court issued a modified child-support order amending the support provisions. Mr. Hawks contends that the Attorney General's office did not properly apply and enforce these orders, so that he was incorrectly assessed with child-support arrearages.

Relying on the *Rooker-Feldman* doctrine, this court affirmed the district court's dismissal of a separate lawsuit against current Texas Attorney General Greg Abbott. *Hawks v. Abbott*, 365 F. App'x

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[1] *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fid. Trust Co.*, 263 U.S. 413, 415-16 (1923).

124 (10th Cir. 2010) (*Hawks I*). Mr. Hawks concedes on appeal that the claims in Hawks I and in this case are "almost identical in Subject Matter." Aplt. Br. at 1. Because Mr. Hawks seeks to assert in this suit the same type of claims that Hawks I held to be precluded by the *Rooker-Feldman* doctrine, the judgment of the district court is AFFIRMED. Appellant's motion to file the appendix from *Hawks I* in this appeal is GRANTED. All other pending motions are DENIED.

Entered for the Court

Jerome A. Holmes
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STEPHEN L. HAWKS,

Plaintiff,

v.

JIM MATTOX, DAN MORALES, JOHN CORNYN, and GREGG ABBOTT, in their personal supervisory capacities as Attorney Generals of the State of Texas, and JANE DOES 1-50, employees of the Texas Attorney General Child Support Division, in their personal and supervisory capacities,

Defendants.

CIV 09-0436 BB/KBM

MEMORANDUM OPINION & ORDER

(Filed Dec. 22, 2009)

Upon further review of this matter, the referral to the Magistrate Judge is hereby revoked, *see Doc. 47*, and for the reasons below, this action will be dismissed without prejudice for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* Doctrine. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923).

This matter involves more than a two-decade dispute between Plaintiff and the State of Texas

concerning how it calculated the amount of child support he was obligated to pay, with the last order being entered in April 2006. This is not the first civil suit involving the same categories of Defendants. Indeed, the subject of this suit served as the foundation for federal criminal proceedings where Plaintiff pleaded guilty to, among other things, violating 18 U.S.C. § 228(a)(3). *See, e.g., Doc. 1* at *3-5, 9-10, 23-25*; *Doc. 36-7* at 1 (plea agreement to "Count[ ] 1 . . . of the Second Superseding Indictment charging violation[ ] of 18 U.S.C. § 228(a)(3), that being 'Felony Failure To Pay Past-Due Child Support"); *Doc. 36-6* at 1-2 ("Count 1 . . . as originally ordered on July 20, 1988 . . . past due child support obligation has remained unpaid for more than two years and is in an amount greater than $10,000.00 . . . in violation of Title 18, United States Code, Sections 228(a)(3) and 228(c)(2)"); *Hawks v. Castilleja et al.*, CIV 07-348 LH/LAM (hereinafter *Hawks – Judge Hansen*).

In a comprehensive decision entered in March of this year, Senior United States District Judge C. LeRoy Hansen dismissed Hawks' other similar civil action for lack of subject matter jurisdiction even under the narrow scope of the *Rooker-Feldman* doctrine. At its heart, the suit before Judge Hansen challenged whether child support orders, especially the Modified Order of February 18, 1998,[1] were

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[1] There is some dispute whether the year of entry was 1998 or 1999, but I find that immaterial to the application of the *Rooker-Feldman* Doctrine.

calculated correctly. *See id.* at 4, 11-13. Despite the smoke and mirrors Mr. Hawks raises in his pro se complaint, that is also the precise issue raised in this lawsuit.

Plaintiff filed the instant action on May 5, 2009, after Judge Hansen's dismissal order was entered. Here, Plaintiff asserts that the Texas court's miscalculations and its law enforcement efforts to recover assessed arrearages in child support deprived him of:

(1) "rights, privileges, or immunities secured by the Constitution and laws as stated in 42 U.S.C. § 1983," *Doc. 1* at 35;

(2) "equal protection of the laws, and of equal privileges and immunities under the laws as set forth in . . . § 1985," *id.*;

(3) his rights under the "interstate commerce clause under . . . § 1983," *id.*; and

(4) constitutes intentional infliction of emotional distress, *id.* at 36.

Thus, some of the claims here are identical to those in Judge Hansen's suit. On the other hand, the parties are different.

Here, the only defendant who is the same as in Judge Hansen's suit is Texas Attorney General Gregg Abbott. Yet, here he is named in what I construe to be his official capacity only and in Judge Hansen's suit he was construed to be named in his individual capacity only. Compare *Doc. 1* at 1 ("in their personal **supervisory** capacities") (emphasis added) *with*

Hawks – Judge Hansen (Doc. 106 at 1 ("Individually and Personally as Attorney General of Texas") and id. at 15 ("thus, [Abbott] cannot be held individually liable for Plaintiff's claims under the Fourth and Eighth Amendments" for conduct that occurred before he became Attorney General). Likewise, the other defendants in Judge Hansen's suit were four employees who worked in the "Child Support Division" of the Texas Attorney General's Office and were connected with the calculations or enforcement in Plaintiff's case.[2] Here, Plaintiff names fifty yet unidentified "Jane Does" who worked or work in the Division and presumably have some connection to the calculations or enforcement in Plaintiff's case. And, unlike Judge Hansen's case, here Plaintiff names former Texas attorney generals whose collective tenure spans the decades of calculations at issue: former Texas attorney generals John Cornyn and Dan Morales, *see Doc. 11-5*, *Doc. 36-5*, and former Texas Attorney General Jim Mattox, who died months before Plaintiff filed his action and has not been served for obvious reasons.[3]

All of the attorney generals have moved to dismiss this action on "preclusion" grounds. *See Doc. 11* at 2, *Doc. 12* at 2, *Doc. 36* at 2. While it is true that "claim preclusion" or "issue preclusion" will prevent relitigation of the same issue in another suit, one of

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[2] *See* www.oag.state.tx.us/cs (the "Child Support Division" page of the "Attorney General of Texas Greg Abbott" website).

[3] *See* www.washingtonpost.com/wp-dyn/content/article/2008/11/23/AR2008112302209.html.

the requirements in either instance is that both actions involve the same litigants. *See, e.g*, *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005) (discussing doctrine of "res judicata, or claim preclusion"), *cert. denied*, 547 U.S. 1030 (2006); *Mabry v. State Bd. of Community Colleges and Occupational Educ.*, 813 F.2d 311, 316 (10th Cir.) (discussing "[i]ssue preclusion or estoppel"), *cert. denied*, 484 U.S. 849 (1987). Given that this suit involves wholly different defendants and Defendant Abbott is sued in a different capacity, I am unpersuaded that preclusion is an appropriate ground upon which to dismiss.

That does not mean I disagree with Judge Hansen's analysis, and the attorney generals here raise the same jurisdictional and nonjurisdictional grounds for dismissal as raised there. As stated above, I agree with Judge Hansen that the *Rooker-Feldman* Doctrine deprives the Court of subject matter jurisdiction but add these observations.

Hawks denies that he is attempting to undo the original child support order in 1988, and I concur with that assessment. At its essence, however, the Complaint alleges that the Modified Order of February 18, 1998 failed to accurately calculate Hawk's child support obligations pursuant to the original order and thereby incorrectly assessed arrearages for which he was later successfully prosecuted for failing to pay. Thus, it is that final February 18, 1998 Modified Order that is challenged by Hawks in the instant action.

As the Supreme Court explained,

> The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by "state-court losers" challenging "state-court judgments rendered before the district court proceedings commenced." *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005). . . . The *Rooker-Feldman* doctrine . . . includes three requirements: (1) "[T]he party against whom the doctrine is invoked must have actually been a party to the prior state-court judgment or have been in privity with such a party"; (2) "the claim raised in the federal suit must have been actually raised or inextricably intertwined with the state-court judgment"; and (3) "the federal claim must not be parallel to the state-court claim."

Lance v. Dennis, 546 U.S. 459, 460 & 462 (2006) (internal citations omitted). Here, all three requirements are clearly satisfied. *See eg., Jackson v. Davidson*, 272 Fed App'x 722 (10th Cir. 2008) (holding action seeking to enjoin enforcement of state divorce decree is "precisely the type of claim encompassed by the *Rooker-Feldman* doctrine" and quoting *Van Sickle v. Holloway*, 791 F.2d 1431, 1436 (10th Cir.1986) for proposition that "[f]ederal district courts do not have jurisdiction over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional"). Because this Court

lacks subject matter jurisdiction, the dismissal must be without prejudice. *See Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006) (reversing dismissal with prejudice even where amendment of pleading could not eliminate standing as a bar to subject matter jurisdiction because "[a] longstanding line of cases from this circuit holds that where the district court dismisses an action for lack of jurisdiction, as it did here, the dismissal must be without prejudice.").

Judge Hansen further explained that even if the doctrine was not applicable, several alternative reasons justified dismissal of the complaint but with prejudice, among them:

- lack of personal jurisdiction under Rule 12(b)(2) because 42 U.S.C. § 1983 has no nationwide service of process, *see Hawks – Judge Hansen* (Doc. 106 at 4, 6);
- lack of personal jurisdiction under Rule 12(b)(2) and New Mexico's long-arm statute because Texas Attorney General Abbott was not the attorney general for any alleged conduct occurring prior to his taking office but, in any event, his alleged "contacts" with New Mexico regarding enforcement of the child support obligations were not sufficient, *see id.* at 7-11;
- failure to state a claim under Rule 12(b)(6) because use of lawful means to collect child support arrearages do not

rise to the level of a constitutional violation and are therefore not actionable under 42 U.S.C. § 1983, *see id.* at 5, 14-15; and

- the conduct alleged was not sufficient to state a claim for intentional infliction of emotional distress under state law, *see id.* at 16-17.

Moreover, Judge Hansen also did not allow Plaintiff to file a second amended complaint because it would be "futile" to do so. The second amended complaint, among other things, asserted that the alleged miscalculations and efforts to recover the arrearage violated due process, equal protection, and New Mexico's prohibition against intentional infliction of emotional distress. *See id.* (Doc. 67 at 10-18). Given that the proposed amendments did not cure the defects in personal and subject matter jurisdiction and because "all of the claims in the second amended complaint, including Plaintiff's equal protection claim, should be dismissed on the merits for the same reasons discussed herein," Judge Hansen dismissed the case. *See id.* (Doc. 106 at 17). That matter is presently on appeal. *See Hawks v. Abbott*, No. 09-2075 (briefing appears complete as of 9/28/09).

In addition, like Judge Hansen and as elaborated in the motions before me, I further agree that if *Rooker-Feldman* did not bar this Court from exercising jurisdiction, the Court would find that Plaintiff has not stated a viable due process, equal protection, or intentional infliction of emotional distress claim.

Moreover, the Eleventh Amendment bars recovery of damages against the attorney generals in their official capacities, defendants collectively would be is absolutely or qualifiedly immune. *See, e.g., Doc. 36.* In addition, there are wholly independent grounds why Plaintiff's Complaint may fail to state any claim. First, the "Deadbeat Parents Act" under which Plaintiff was convicted and imprisoned has been upheld against Commerce Clause challenges. *See United Sates* [sic] *v. Kukufka*, 478 F.3d 531, 535-36 (3rd Cir. 2007); *United States v. Rich*, 336 F.3d 293 (4th Cir. 2003); *United States v. Klinzing*, 315 F.3d 803, 806-07 (7th Cir. 2003) (citing nine other circuits that agree, including *United States v. Hampshire*, 95 F.3d 999 (10th Cir. 1996), *cert. denied*, 519 U.S. 1084 (1997)); *United States v. Monts*, 311 F.3d 993, 996-997 (10th Cir. 2002), *cert. denied*, 538 U.S. 938 (2003). Also, for the reasons and authorities stated in the attorney general motions, Plaintiff's federal claims appear barred by the statute of limitations, regardless of whether Texas or New Mexico law is used. *See, e.g., Doc. 11* at 20-22. Thus, even if I disagreed that Plaintiff fails to state an intentional infliction of emotional distress claim, with no viable federal claims, the Court would decline to exercise supplemental jurisdiction of the remaining state claims. *See, e.g., Spencer v. Landrith*, 315 Fed. App'x 62, 67 (10th Cir. 2009) ("In accordance with 28 U.S.C. § 1367(c)(3), a district court has the discretion to decline to exercise supplemental jurisdiction over a state-law claim if 'the district court has dismissed all claims over which it has original jurisdiction.' *See also Smith v. City of*

Enid ex rel. Enid City Comm'n, 149 F.3d 1151, 1156 (10th Cir. 1998) ('When all federal claims have been dismissed, the court may, and usually should, decline to exercise jurisdiction over any remaining state claims.').").

Wherefore,

IT IS HEREBY ORDERED AS FOLLOWS:

1. My referral to the Magistrate Judge for a recommendation under 28 U.S.C. §§ 636(b)(1)(B), (b)(3), and *Virginia Beach Fed. Sav. & Loan Ass'n v. Wood*, 901 F.2d 849 (10th Cir. 1990) (*Doc. 47*) is **revoked**;

2. Defendants' motions to dismiss (*Docs. 11, 12, 36*) are **granted insofar as they seek dismissal based upon the Rooker-Feldman Doctrine**;

3. Plaintiff's motions for "summary judgment," to "strike," and to "take judicial notice" (*Docs. 26, 35, 40*) and Defendant Cornyn's motion to strike (*Doc. 39*) are **denied as moot**;

4. This action be **dismissed without prejudice**; and

5. A final order enter concurrently herewith.

/s/ Bruce D. Black
UNITED STATES
DISTRICT JUDGE